

**UNITED STATES DEPARTMENT OF COMMERCE****United States Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/486,037 02/18/00 ORENGA

S 105454

EXAMINER

HM12/0605

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ALEXANDRIA VA 22320

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ART UNIT	PAPER NUMBER
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1645

DATE MAILED:

06/05/01

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Offic Action Summary	Application No.	Applicant(s)
	09/486,037	ORENGA, SYLVAIN
	Examiner lesha P Fields	Art Unit 1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-24 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) Notice of References Cited (PTO-892) 18) Interview Summary (PTO-413) Paper No(s). _____
- 16) Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) Notice of Informal Patent Application (PTO-152)
- 17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 20) Other: _____

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DETAILED ACTION

Applicant's preliminary amendment filed February 18, 2000 (Paper No. 2) has been received and entered. Claims 1 and 13 were amended, consequently 1-24 are pending in the instant application.

Priority

Acknowledgment is made of applicant's claim for foreign priority based on PCT application filed July 31, 1998.

Oath/Declaration

It does not identify the post office address of each inventor. A post office address is an address at which an inventor customarily receives his or her mail and may be either a home or business address. The post office address should include the ZIP Code designation.

Claim Objections

Claim 16 is objected to under 37 CFR 1.75(c) as being in improper form. It has been noted that the claim was amended to eliminate multiple dependency. However, the claim now recites "medium according to claim 15, characterized in that the activator consists of a hexosamine and/or a hexosaminidine and/or in that the inhibitor takes the characteristics of".

Claim Rejections - 35 USC § 112

1. Claims 1,13-14 and 21-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

A) Claim 13-14 are vague and indefinite in recitation of a "specific portion". One of skill in the art would be unable to determine the metes and bounds of such a limitation. For instance, what "specific portion" is being claimed by the applicant? Without a clear definition as to which specific portion the Applicant is referring to, one of skill in the art would be unable to replicate the claims. The claims are further indefinite in recitation of "marker potion". For the same reasons set forth above.

B) Claims 1 and 21-22 are vague and indefinite in recitation of "advantageously essentially". One of skill in the art would be unable to determine the metes and bounds of such a limitation. For instance, does 40, 45, or 50 hours constitute a sufficient waiting period? Without a clear definition as to the exact waiting period, one of skill in the art would be unable to replicate the claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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2. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Orenga in view of Pincus.

The claims are drawn to a culture medium specific for the identification and differentiation of *Candida albicans* and *Candida tropicalis* yeast.

Orenga et al. (US Patent 5,534,415) teach of a selective detection medium for the culture and detection of *Candida albicans* (See Entire Document). Orenga et al. further teach that the selective media comprises two substrates which can be hydrolyzed by enzymes from the hexosaminidase and glucosidase family. Orenga further teach of a medium characterized in that the medium is gelled and comprises peptones, yeast extract, glucose, and a phosphate buffer between 5 and 8.5.

Orenga does not teach of a culture medium specific for the identification and differentiation of *Candida albicans* and *Candida tropicalis* yeast.

Pincus (US Patent 4,874,695) teach of culturing *Candida* spp. in a medium which facilitates identification of the microorganism. Pincus further teach of using substrates which are capable of reacting with enzymes in culture and produce a distinctly colored reaction product.

Given that 1) Orenga et al. has taught of a selective detection medium for the culture and detection of *Candida albicans* and that 2) Pincus has taught of culturing yeast in a medium that facilitates selective detection of microorganisms such as yeast it would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to make a culture medium specific for the identification and differentiation of *Candida* spp. One would have been motivated to make such a medium in view of the teachings of Pincus that a system which applies the technology of chromogenic substrates is needed for the cultivation and rapid identification of medically significant yeast isolates.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Iesha P Fields whose telephone number is (703) 605-1208. The examiner can normally be reached on 7am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (703) 308-3909. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3014 for regular communications and (703) 308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Iesha Fields

June 4, 2001



MARK NAVARRO
PRIMARY EXAMINER